



DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

[Docket DARS-2021-0026]

RIN 0750-AL50

**Defense Federal Acquisition Regulation Supplement: Trade
Agreements Thresholds (DFARS Case 2022-D003)**

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to incorporate revised thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.

DATES: Effective January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bass, 571-372-6174.

SUPPLEMENTARY INFORMATION:

I. Background

This rule adjusts thresholds for application of the World Trade Organization (WTO) Government Procurement Agreement (GPA) and Free Trade Agreements (FTA) as determined by the United States Trade Representative (USTR). The trade agreements

thresholds are adjusted every two years according to predetermined formulae set forth in the agreements. The USTR has specified the following new thresholds in the **Federal Register** (86 FR 67579, November 26, 2021), which are being implemented in this rule:

Trade Agreement	Supply Contract (equal to or exceeding)	Construction Contract (equal to or exceeding)
WTO GPA	\$183,000	\$7,032,000
FTA:		
Australia	\$92,319	\$7,032,000
Bahrain	\$183,000	\$12,001,460
CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	\$92,319	\$7,032,000
Chile	\$92,319	\$7,032,000
Colombia	\$92,319	\$7,032,000
Korea	\$100,000	\$7,032,000
Morocco	\$183,000	\$7,032,000
Panama	\$183,000	\$7,032,000

Peru	\$183,000	\$7,032,000
Singapore	\$92,319	\$7,032,000

Updates for the United States-Mexico-Canada Agreement (USMCA), which superseded the North American Free Trade Agreement (NAFTA), are not included in this revision to the trade agreements thresholds in the DFARS. On January 29, 2020, the President signed into law the United States-Mexico-Canada Agreement Implementation Act, through which Congress approved the USMCA. On July 1, 2020, the USMCA entered into effect. Although Canada is still a designated country under the WTO GPA, Canada is no longer a Free Trade Agreement country, because chapter 13 of the USMCA (Government procurement) applies only to the United States and Mexico. While updates to the DFARS to implement the revisions resulting from the USMCA are not implemented in this final rule, implementation is being accomplished via separate rulemaking under DFARS Case 2020-D032. Changes to the Federal Acquisition Regulation (FAR) to implement the USMCA are being accomplished under FAR Case 2020-014.

II. Publication of this final rule for public comment is not required by statute

The statute that applies to the publication of the FAR is 41 U.S.C. 1707. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds

and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it only adjusts the thresholds according to predetermined formulae to account for changes in economic conditions, thus maintaining the status quo, without significant effect beyond the internal operating procedures of the Government.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule amends the DFARS to revise thresholds for application of the WTO GPA and the FTA. The revisions do not add any new burdens or impact applicability of clauses and provisions at or below the simplified acquisition threshold or to commercial items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of

promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD will submit a copy of the final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule, because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1, and 41 U.S.C. 1707 does not require publication for public comment.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C chapter 35) does apply, because the final rule affects the prescriptions for use of the certification and information collection requirements in the provision at DFARS 252.225-7035, Buy American-Free Trade Agreements-Balance of Payments Program Certificate, and the

certification and information collection requirements in the provision at DFARS 252.225-7018, Photovoltaic Devices—Certificate. The changes to these DFARS provisions do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704-0229, entitled “DFARS Part 225, Foreign Acquisition and related clauses,” because the threshold changes are in line with inflation and maintain the status quo.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 225-FOREIGN ACQUISITION

225.1101 [Amended]

2. Amend section 225.1101 by—
- a. In paragraph (6) introductory text, removing “\$182,000” and adding “\$183,000” in its place;
 - b. In paragraph (10)(i) introductory text, removing “\$182,000” and adding “\$183,000” in its place;
 - c. In paragraph (10)(i)(A), removing “\$182,000” and adding “\$183,000” in its place;

- d. In paragraph (10)(i)(B), removing "\$83,099" and adding "\$92,319" in its place;
- e. In paragraph (10)(i)(C), removing "\$182,000" and adding "\$183,000" in its place; and
- f. In paragraphs (10)(i)(D) through (F), removing "\$83,099" and adding "\$92,319" in its place.

225.7017-3 [Amended]

3. Amend section 225.7017-3 by—

- a. In paragraph (b), removing "\$182,000" and adding "\$183,000" in its place; and
- b. In paragraph (c)(2), by removing "\$180,000" and adding "\$183,000" in its place.

225.7503 [Amended]

4. Amend section 225.7503 by—

- a. In paragraphs (a) introductory text and (b) introductory text, removing "\$7,008,000" and adding "\$7,032,000" in its place;
- b. In paragraph (b)(1), removing "\$10,802,884" and adding "\$12,001,460" in its place;
- c. In paragraph (b)(2), removing "\$7,008,000" and adding "\$7,032,000" in its place, and removing "\$10,802,884" and adding "\$12,001,460" in its place;
- d. In paragraph (b)(3), removing "\$10,802,884" and adding "\$12,001,460" in its place; and

e. In paragraph (b) (4), removing "\$7,008,000" and adding "\$7,032,000" in its place, and removing "\$10,802,884" and adding "\$12,001,460" in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225-7017 [Amended]

5. Amend section 252.225-7017 by—

- a. Removing clause date "(JAN 2020)" and adding "(JAN 2022)" in its place;
- b. In paragraphs (c) (2) and (3), removing "\$83,099" and adding "\$92,319" in its place; and
- c. In paragraphs (c) (4) and (5), removing "\$182,000" and adding "\$183,000" in its place.

252.225-7018 [Amended]

6. Amend section 252.225-7018 by—

- a. Removing clause date "(JAN 2020)" and adding "(JAN 2022)" in its place;
- b. In paragraphs (b) (1) and (2), removing "\$182,000" and adding "\$183,000" in its place;
- c. In paragraphs (d) (3) introductory text and (d) (4) introductory text, removing "\$83,099" and adding "\$92,319" in its place; and
- d. In paragraphs (d) (5) introductory text and (d) (6) introductory text, removing "\$182,000" and adding "\$183,000" in each place.